



State emergency under article 356 vis-à-vis Indian Federalism

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Abstract

In Indian Constitution, President's rule refers to suspension of state government and state is ruled by Central Government. Article 356 of the Indian constitution states that if a state government is unable to function according to constitutional provisions, Central government can take direct control of the state machinery. All executive authority is exercised through governor, which is again centrally appointed and has the authority to appoint other administrators to assist them. Since Independence, there have been 126 instances of President rule being imposed in various states of India. Article 356 was given as an emergency provision by constitution makers but is being used repeatedly by Delhi to suspend state governments of opposite political parties on the basis of genuine reasons as well as trumped-up excuses.

Keywords: state emergency, article 356, Indian federalism, president rule, governor

Introduction

In any country situations may arise, when normal constitutional provisions may not be worked out. Enactments containing important and far-reaching provisions are expected to provide for those circumstances^[1]. Black Law's dictionary defines emergency "as a failure of social system to deliver reasonable conditions of life".^[2] The term emergency may be defined as "circumstances arising suddenly that calls for immediate action by the public authorities under the powers especially granted to them"^[3]. In Indian constitution, the emergency provisions can be classified into three categories: (a) Articles 352, 353, 354, 358 and 359 which relate to proper emergency - if we can use that expression, (b) Articles 355, 356 and 357 which deal with President's rule imposition in States in a specific situations and (c) Article 360 which speaks of financial emergency. Among these article 356 is the one frequently misused and abused and hence most talked about^[3]. It is important here that article 356 must be read with the other relevant articles i.e. articles 256, 257, 355 and 365.

^[3] Article 356 is inspired by sections 93 of the Government of India Act, 1935. President can issue a proclamation imposing President's rule over a State as per article 356 if he is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution. However, Constitution clearly suggests to not rush to issue the proclamation and explore all other options^[4]. Article 356 is to be used only as a matter of last resort when it is ensured that the all had been done as article 355, articles 256-257 and the State has failed to comply with or give effect to the directions.

Since, India has federal structure and Article 356 directly interferes with the power of states. Later deals with imposition of President's Rule over a State of India. When President's Rule is imposed on a state, it's elected government (led by the Chief Minister and the Council of Ministers) is suspended, and administration is conducted directly by the Governor of

that state. The Governor is appointed by the President on the recommendation of Prime Minister and Council of Ministers at the centre, thus, effectively, a functionary of the Union Government. The governors of states are generally not residents of the state^[5]. Union Territories of India are governed by The Lieutenant Governors which are appointed by the President on the advice of the union government. These administrators can override policies made by the local government. In the case of a breakdown of constitutional machinery in a state, Article 356 brings about state emergency which dissolves the state government and results in President's rule during which the Union Government can make laws for a state.

^[5] There is no emergency at the centre which can dissolve the union government unlike Government of India Act 1935. Whereas administration is usually shared between Union and State governments in India, imposition of President's Rule negates the federal character of the Indian Constitution. It also against the democratic doctrine of popular sovereignty in India as an elected government of state is suspended by a functionary of Delhi^[6, 7, 8, 9]. Misuse of Article 356 was rampant in the decades following the adoption of the new constitution especially during late 1960s and early 1980s. Various governments used this for political reasons, mainly to dismiss opposition-ruled state governments or to prevent the opposition parties from forming state governments after the elections.⁵ However, the frequency of invocation of emergency provision has declined since the mid-1990s. From 1994 to 2009, in a stretch of 15 years there were only 11 such instances, while in 15 years before 1994, 40 such instances has been witnessed. This has subverted democratic and federal principles that India always affirmed and aspired. Above mentioned reasons have made use of Article 356 controversial^[10]. Article 356 has been used repeatedly by Delhi to suspend state governments of opposite political parties on the basis of genuine reasons as well as trumped-up excuses.

[1] Article 356 states that “If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

- a. assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;
- b. declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
- c. make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.”

For the first time in India provincial autonomy was introduced by The Government of India Act 1935, which aimed to establish India as a Federation of States. It emphasized upon division of powers, independent and apolitical Governors and Governor-Generals for the states. On 26 January 1950, India adopted a new constitution.

[6] According to National Commission, when British controlled India, they had to ensure that power remained centralized in their hands. It was both an imperial and an administrative necessity for them. Hence, they passed 1919 Act which continued to be in effect till India’s independence in 1947 and terms like central government, a central legislature, a system of central laws kept being used even after under the colonial hangover.

Federalism is part of the basic structure of the Indian constitution (adopted after independence) which cannot be altered or destroyed through constitutional amendments under the constituent powers of the Parliament without undergoing judicial review by the Supreme Court. Article 1 of the constitution declares that India is a Union of States and its citizens shall have at least two tier governance. [1] However, Article 3 of the constitution grants the union government exclusive power upon states which give it a quasi-federal structure including (a) to form a new state by separating a territory of any state, or by uniting two or more states or parts of states, or by uniting any territory to a part of any state. (b) the power to establish new states (which were not previously under India's territory) which were not in existence before.

[1] Indian constitution in Part XI has a scheme of distribution of powers designed to blend the imperatives of diversity to bring out a common national endeavour between the central government and the States in India. The division is for legislative, administrative and executive powers. The legislative powers are divided into three lists: Union list,

States list and Concurrent list. Every state do not have same powers. The state of Jammu and Kashmir (J&K) has been given higher degree of federalism under Article 370 of the Indian constitution [1]. In the same way, Union Territories of Delhi and Puducherry are provided with lesser degree of federalism under Article 239A and 239AA respectively [1]. All the other union territories are directly governed by the union government. As per distribution of legislative powers in concerned Union List consists of 100 items (previously 97 items) on which the parliament has exclusive power to legislate, State List consists of 61 items (previously 66 items) on which state assembly has exclusive power to legislate except in the case of emergency and Concurrent List consists of 52 (earlier 47) items on which both centre and state can legislate. However, in case of dispute between centre and state for legislation on any item in Concurrent list, centre’s law will prevail. The subjects that are not mentioned in any of the three lists are known as residuary subjects. Parliament has been given power to legislate over these subjects as per Article 248, following the procedure per Article 368. Many a times states can also make laws on these subjects. For any amendment in any of these lists, it should be done by the Parliament under as per Article 368 with ratification by the majority of the states. Union government has many times interfered in these lists also [12]. One decision which was particularly against the federal nature was taking control of industries under union list, which was a subject in the concurrent list in the 1935 act. Not only this, but Freight equalisation policy was introduced in 1952 by the union government which resulted in the resource drain and backwardness of a number of Indian states maximum sufferers being West Bengal, Bihar (including present-day Jharkhand), Orissa and Madhya Pradesh (including present-day Chhattisgarh) as they lost their competitive advantage of holding the minerals. Now, factories could be set up anywhere in India which was not so earlier [12]. Although Freight equalisation policy was removed in the early 1990s, these states could not catch up with the more industrialised states.

[1] Although, Union and states fully control their respective independent executive staffs on issues they are empowered to legislate, it is the duty of the Union Government to ensure that the government of every State is carried on in accordance with the provisions of the Constitution per Article 355. Yet, central government can’t unnecessarily interfere in legislative and administrative matters of a state except when president rule is promulgated in that state. State governments cannot go against the Central laws in administrative matters as per Article 256 [1]. If State fails to work according to the Constitution, President’s rule is imposed under Article 356 and President takes over its (the State’s) administration with post facto consent of the Parliament per Article 357.

[1, 13] States have financial autonomy in spending the financial resources available with them for public purpose as per Article 282 [14]. States can borrow without any limit to its ability for its requirements within the territory of India without any consent from the union government as per Article 293 [14]. But, if state don’t compile with the loan terms, has outstanding loan charged to the consolidated fund of India or an outstanding loan for which a guarantee has been given by the Government of India, central government can interfere

with state finances. Although, Government of India permits public/private limited companies to raise loans internally and externally based on its performance/repayment reputation but states borrowings are unconstitutionally limited even when they have not defaulted / led to financial emergency. Many state governments expenditures on their employees salary and pension are exceeding their total revenue, but no financial emergency is imposed by the President to restrict the expenditure for enhancing the productivity of the government employees. In this way, Emergency articles are used at will by centre.

Every five years a Finance Commission is constituted by President to recommend the modality for devolving union government revenues between central and state governments as per article 280(3). According to National Commission ^[6], Finance Commission has been one of the major success stories of the Constitution. It suggested to associate the States preferably by having the National Development Council (comprising the Prime Minister and the Chief Ministers of States) without any amendment of article 280(3)(d). It also recommended that terms of Finance Commission should be such that it would take care of financial relations between the Union and the States in a comprehensive way with broader aspects after discussion with the National Development Council.

The states are dependent upon centre for grants-in-aids and resource allocations as recourses are allocated to the states on the basis of recommendations of a Commission. However, Centre is also heavily dependent upon the states for proper implementation of its policies. State governments also successfully defy the directives of the Union many times such as state governments have refused to levy taxes on agricultural income which the Centre has recommended many times. These characters make India an example of cooperative federalism. Thus, Indian federalism can be said to a political bargaining process between the centre and states.

President can also proclaim a financial emergency when the financial stability or credit of the nation or of any part of its territory is threatened as per Article 360 of the constitution,. However, no situation as such has ever arisen and hence, until now no guidelines defining the situation of financial emergency in the entire country or a state or a union territory or a panchayat or a municipality or a corporation have been framed either by the finance commission or by the central government ^[15, 16]. Instead Union Government has imposed uniform taxation laws (GST) throughout India and has taken over of tax collection mechanism of states with ratification from BJP governed states, which too were earlier against it, without regards for the positive and negative inherent aspects of each state which are to be addressed by each state from time to time. It makes Delhi more powerful for distribution of finances and negative step when federal structure of Indian Constitution is considered ^[17]. Against the principle of GST, Supreme Court also recently upheld the constitutional right of states to impose Entry Tax which supports autonomy to states which items they want in their state ^[13]. Also, central funds to the states are given by union under specific identified schemes (like NREGA, etc.) whose implementation by the states is subject to the satisfaction of the Delhi which is highly controversial and against Article

282. Another consequence of economic planning in India is increasing consciousness among the states about their dependence on the bounties distributed by the Union Government leading to position of helplessness. Thus, states leave no chance of centre-baiting and aggressively demand for greater state autonomy.

States can make agreements among themselves without violating applicable laws in respective states. In case of dispute with another state or a group of states or central government or union territory, the judgement of Supreme Court will be final as per Article 141 except with respect to adjudication of any dispute in the use, distribution or control of the interstate river waters as per Article 262. The National Commission ^[6] however advised to solve river water disputes between two or more States and/or the Union by a bench of not less than three Judges and if necessary, a bench of five Judges of the Supreme Court or as per article 145(1) the Supreme Court by giving consultation may appoint Commissioners or Masters so that the precious time of the Supreme Court is saved. Alternatively, The National Commission ^[6] suggest to appoint an authority over all the inter-State rivers. As the River Boards Act, 1956 ^[18] has remained a dead letter it can be replaced it by another comprehensive enactment under Entry 56 of List I.

President can also establish an interstate council to resolve the disputes between states and the union and for better implementation of policies under Article 263. Sarkaria Commission ^[7] and National Commission ^[6] recommended that interstate council shall be more effectively utilized in tune with the spirit of cooperative federalism.

However, India's federalism seems to have lost its charm as it appears to be operating in a unitary manner with an extreme bias towards the Centre in present scenario. A state government can't be simply dismissed by making a ruling party lose its majority on the floor of the house. The steps have to carefully planned and executed with acquiescence from, if not the willing concurrence of, various constitutional functionaries. The most important role is played by the speaker of the house, who conducts the legislature and have the power to disqualify members of the assembly. If he disqualifies a member by tribunal, the orders can only be set aside by a high court or the Supreme Court. Another crucial factors include having governor of the state and ruling party at the Centre on your side. Huge role is played by the governor, when he calls upon an incumbent chief minister to prove his majority, as granting extra days or denying them often makes the difference between a motion of no confidence being won or lost. The governor also has to ensure that no breakdown of the constitutional machinery occur in the state. If at any point of time, he arrives at such a conclusion and reports it to the Centre, then Centre can intervene, impose President's rule and dismiss the elected government.

Recently, Article 356 was imposed in Arunachal Pradesh and Uttarakhand. Ruling state party's MLAs were encouraged to revolt against sitting CMs. Even if these dissident MLAs numbered less than two-thirds in strength of the party in the legislature, they were insured against the possibility of disqualification by central government to achieve the vision of a Congress-mukt Bharat.

According to Niranjana Sahoo ^[19], the Key triggers for

changing central- state relations include the rise of regional political parties, globalisation and liberalisation of the economy and judicialisation of the federal process. These cross cutting developments have deeply influenced concept of federalism being perceived today from what was perceived by the framers of the Indian Constitution. Now, federalism is under a new spotlight, and tensions between the Centre and states continue to rise over crucial key issues.

In the light of few instances of misuse of President's rule, the court's judgement to reinstall the previous government, a lot of people argue to demolish the post of Governor. According to Sandipan Sharma ^[20], "If the Narendra Modi government wants to show some contrition for using the governor's office to destabilise governments in Uttarakhand and Arunachal, it has a simple option: Abolish the post". He frankly advises to send Governors' to their homes and to put Governors' properties to public use. The Supreme Court verdict on Arunachal Pradesh is the perfect opportunity to reconsider the rationale of appointing governors. Governors have been accused of being the Centre's spies, musclemen and agents, but now with court's interference days of governors using their discretion to destabilise governments are over. As court stated in Arunachal case ^[21] "...The governor must remain aloof from any disagreement, discord, disharmony, discontent or dissension, within individual political parties." "...The governor must keep clear of any political horse-trading, and even unsavoury political manipulations, irrespective of the degree of their ethical repulsiveness. Who should or should not be a leader of a political party, is a political question, to be dealt with and resolved privately by the political party itself. The governor cannot make such issues a matter of his concern.." As the governor's post is largely a ceremonial one, now even deprived of their ability to destabilise governments, they would be of little use to Delhi. A lot of If the Governors role has brought shame to their office recently, Narayan Dutt Tiwari, JP Rajkhowa and Ram Naresh to name a few.

However, others believe in the sanctity of keeping the post of Governor and Article 356. According to D.N.K.J. Parsad ^[22]: "Article 356 is one of the major tools in the hands of Union Government enabling it to check any disruptive and separatist tendencies in their infancy. In order to keep our unique Federal system with its strong unitary features in fact this potent medicine cannot be dispensed with." The National Commission⁶ framed a consultation paper and questionnaire to know views and responses of the public. Large majority of the people responded against deletion of article 356, but agreed its amendment to prevent misuse. Major reasons for retention of the article included: "a) Article 356 and related provisions were regarded as a bulwark of the Constitution, an ultimate assurance of maintaining or restoring representative government in States responsible to the people. b) In a fairly large number of cases the invocation of article 356 has been found to have been not only warranted but inevitable. c) If this article is deleted, article 365 would lose relevance and use of article 355 in the absence of 356 might bring a drastic change in Union-State relations which may be worse from the point of view of both the States and the Union."

Sarkaria commission ^[7] also was not in favour of deleting article 356 because if article 356 is deleted while articles 355 and 365 are retained, the situation will be worse from the

point of view of States. The Sarkaria Commission⁷ and National Commission ^[6] also suggested reforms in the appointment of governors. Both suggested that only eminent persons from any particular field from outside the state who have stayed away from active politics for a long period be appointed in consultation with the chief minister of the state, Vice-President of India and the Speaker of the Lok Sabha. He should not too intimately connected with the local politics of the State and be a detached figure. But, no government bothered to implement the reforms. Delhi has used this post as a reward for loyalists, stooges or as a ruse for shielding them from legal proceedings. The Sarkaria Commission ^[7] recommended to give prominence to State Government in appointing the Governor by choosing Governor from from a panel prepared by the State Legislature or from a panel prepared by the State Government or Chief Minister. Commission believed that the Chief Minister must be consulted before appointing the Governor as personal rapport between Governor and Chief Minister is must for proper working of the Parliamentary system. It also recommended consultation from the Vice President of India and Speaker of the Lok Sabha by the Prime Minister for selection of Governor as such consultation will greatly enhance the credibility of the selection process. Supreme Court has emphasized on the urgent need for implementing Sarkaria commission's recommendations many times on selection and appointment of Governors.

Term "Union of states" was used in constitution instead of "Federation of states". Dr. Bhimrao Ramji Ambedkar ^[23] explained the significance of the use of the expression "Union" instead of the expression "Federation" for the consideration of the Constituent Assembly on 4 November 1948, when he said "...what is important is that the use of the word 'Union' is deliberate... Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source..."

The Indian political system, is an administrative system rather than a contractual federation (America) and has also passed through various phases of federal policy starting from quasi-federal character to cooperation and competition, finally reaching a stage of extreme centralization. Wheare ^[9] has rightly remark that "India is a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles." The unique feature which distinguishes the Indian federalism from American system is the Parliament's power to make laws for the whole or any part of the territory of India.

A governor is a public official who has power to govern the executive branch of a non-sovereign or sub-national level of government, and his ranking is generally under the head of state. In federations however, *governor* may be a politician who governs a constituent state and may be either elected or appointed ^[24]. In India, historical background of the post of Governor started in 1858 when The Government of India Act, 1858 ^[25] transferred the responsibility for administration of India from the East India Company to the British Crown. The Governor became an agent of the British Crown who functioned under supervision of the Governor-General. In

1919, by The Montagu-Chelmsford Reforms^[26] a rudimentary form of responsible Government was formed, but pivot of the Provincial administration continued to be The Governor. When provincial autonomy was introduced in India by The Government of India Act, 1935^[2], Governor was required to take the advice of Ministers who were responsible to the Legislature. Still, special responsibilities remained with the Governor, such as maintaining peace or tranquility of the Province, and so on. He functioned under the superintendence and control of the Governor General, whenever he acted in his individual judgment or discretion.

Role of Governor changed a lot after independence. Expressions like 'in his discretion', 'acting in his discretion' and 'exercising his individual judgment', were deleted wherever they occurred in the 1935 Act. Now, Governor has to exercise these all functions on the advice of his Council of Ministers. The Constituent Assembly discussed at length the various provisions relating to the Governor. Jawaharlal Nehru^[23] explained in the Constituent Assembly why a Governor should be nominated and not elected "an elected Governor would to some extent encourage that separatist provincial tendency more than otherwise. There will be far fewer common links with the Centre." However, no change was made in Draft Article 143, which referred to the discretionary powers of the Governor. Replying to it, Dr. Ambedkar^[23] maintained that vesting the Governor with certain discretionary powers was not contrary to responsible Government. Most important discretionary power which remained with Governor is to recommend the The President of India to implicit Article 368 in the state. Although, Article 356 is being misused by the centre to remove governments of opposition parties now a days, but this was not the intention of the founding fathers of constituent assembly. The framers of the Constitution were acutely aware from their socio-political experience that stability of its polity and security of the Nation could not be taken for granted as the road to democracy have never been smooth one. India with its heterogeneous nature of race and region, social, economic and political life, the diversity in languages was expected to present a lot of problems to the nascent republic. In the constituent assembly debate it was suggested that Article 356 is liable to be abused for political gains. On August 4, 1949, towards the end of the debate on the Centre's power to impose President's rule in the states, Dr. Bhimrao Ramji Ambedkar, Chairman of the Drafting Committee of the Constitution of India reassured the Constituent Assembly when debated in favour of Article 356^[23] (Draft Article 278):

"Pandit Hirday Nath Kunzru (United Provinces: General): May I ask my honourable friend to make one point clear? Is it the purpose of Articles 278 and 278A (Articles 356 and 357) to enable the Central Government to intervene in Provincial affairs for the sake of good government of the Provinces?

Dr. Ambedkar: No, No. The Centre is not given that authority.

Pandit Hirday Nath Kunzru: Or only when there is such mis-government in the Province to endanger public peace?

Dr. Ambedkar: Only when the government is not carried on in consonance with the provisions laid down for the constitutional governance of the Provinces. Whether there is good government or not in the Province is not for the Centre to determine. I am quite clear on the point... In regard to the

general debate which has taken place in which it has been suggested that these articles are liable to be abused, I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces. In fact, I share the sentiments expressed by my honourable Friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening, in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article. It is only in those circumstances he would resort to this article. I do not think we could then say that these articles were imported in vain or that the President had acted wantonly..."

Article 356 was totally shut out during the Emergency from judicial review by the 38th Constitutional Amendment^[28] which added clause (5) to Article 356, stating, "Notwithstanding anything in the Constitution, the satisfaction of the President mentioned in Clause (I) shall be final and conclusive and shall not be questioned on any ground." However, Morarji Desai Government in 1978 passed 44th Constitutional Amendment Act^[29] by which the original Article 356, as envisaged by Dr. Ambedkar, was restored.

The 42nd Amendment^[30] of Indian Constitution again conclusively proved that nature of federalism in India is not contractual but administrative^[31]. Essence of Indian administrative federalism is not cooperation but dictation. Whether Supreme Court be debarred from judicial review of any constitutional amendment is a question of great controversy. However, in federal or quasi-federal system any dispute between the Centre and the states over any change in constitution/contract makes it specifically clear that it must be subject to an impartial judicial scrutiny.

Despite Ambedkar's hopes, independent India was not a true federation of independent states which have voluntarily acceded into a union. Thus, this power of central government to override the states is not a dead letter, but a heavy hand, which casts a long shadow on centre-state relations. Five distinct phases can be traced in the development of Indian federalism since Independence which depended deeply on political forces at work at different stages. In the first phase, 1947-65 Nehru undisputedly swayed over the country's affairs on the one hand and gave strong reaction to attempts of the colonial power to encourage divisive forces on the other. In the second phase, 1965-71 union government saw changes at the top and multi-party government in the states. Third phase from 1972 to declaration of emergency showed stability under Indira Gandhi's dominating influence. In this phase various states, Jammu & Kashmir and Tamil Nadu in particular asked for greater state autonomy which was advocated by the leaders of the non-Congress governments. Fourth phase is nineteen

months of emergency during 1975-77 when state autonomy was totally at back foot along with federal system. Post-emergency era also the fifth phase saw increased centralisation, quasi federal structure and court's interference in relation of union and states.

Article 356 was first used in March 1953, when country's first non-Congress government, headed by Gian Singh Rarewala in the Patiala and East Punjab States Union (PEPSU) was dismissed. It led to a Congress victory in the elections that followed. It was used for the second time in 1957, when Kerala saw the world's first elected communist government coming into power. Its first major blow was seen to federal structure was seen in 1977 after ending of Emergency. The leader of the pack turns out to be Janata Party Government (first non-Congress government at the Centre), which dismissed state governments headed by Congress and dissolved the assemblies on the basis that they had lost the people's mandate. President's rule was imposed in 12 states in 1977 after the Janata alliance came to power which remains the record for a single year till date. The matter was taken to the Supreme Court in the State of Rajasthan verses Union of India in front of a seven-judge bench. Supreme Court dismissed the petition on several preliminary grounds amongst which was its refusal to get into the thicket of political questions. Few judges even held that presidential satisfaction in invoking Article 356 of the Constitution was not justifiable. Indira Gandhi paid her opponents back in the same coin. Her government returned the favour by dismissing Janata Party state governments in 9 different states in 1980. This action went unchallenged in the courts in the wake of the Rajasthan judgment. Other notable years when President's rule was used excessively include 1992 when it was used in 6 different states and 1971 when it was used in 7 states including thrice in Orissa.

On shrill demand by several leaders of Opposition Indira Gandhi appointed a commission headed by Justice R.S. Sarkaria to go into the Centre-State relationship on March 24, 1983. The Sarkaria Commission^[7] gave its report in 1988, after five years of intense deliberations. It recommended a series of concrete steps prevent the misuse of Article 356 and to strengthen federalism. But these recommendations remained a dead letter. Due to this anomalous situation several State Governments could be summarily dismissed even after 1988, for example it was used in 6 different states in 1992.

Throughout 1980s President's rule was invoked to facilitate or to recover from political horse-trading. Most notable examples include Jammu and Kashmir, where Farooq Abdullah government was replaced by G.M. Shah government, aided by Governor Jagmohan, In Andhra Pradesh, Governor Ram Lal helped to dismiss the N.T. R. Rao government. In 1985, a constitutional amendment made retail floor-crossing grounds for disqualification for membership of parliament or state assemblies. In *Kihoto Hollohan v. Zachillhu and Others* case, the Supreme Court ruled that the speaker's decisions on disqualification were subject to judicial review. The result was that defection became a game of ambitious leaders-in-waiting, footloose legislators and grim court battles. The success of a political operation to topple a sitting government became dependent on speakers cooperating and courts staying away.⁵ It turns out that shorter, less secure

governments have a greater propensity to misuse President's Rule^[5]. While Sarkaria commission frowned on the tendency of Centre to use President's Rule to bring their own state parties in line, it seems more problematic to use it to remove opposition parties.

Prime Minister P.V. Narasimha Rao's government dismissed four states governments lead by the BJP in the wake of destruction of the Babri Masjid. In 1994, this dismissal was challenged by *S.R. Bommai verses Union of India* case^[32], in which a nine-judge bench revived this and earlier impositions of Article 356. Supreme court passed a landmark judgement in this case which acknowledged misuse of the article and laid down principles for the union government to follow before the state emergency can be invoked. Court upheld the dismissal of the BJP governments of all four states to protect secularism, which is part of the Constitution's basic structure. It also gave a number of guidelines while imposing Article 356 in any state and brought president's satisfaction to apply President's Rule under the review of court. Court can now question the material behind the satisfaction of the President although it can't question the advice given by Council of Ministers to the President. Judicial review can involve only three questions: a) Is there any material behind the proclamation? b) Is the material relevant? c) Was there any mala fide use of power? It cleared that Article 356 can only be invoked if objective material is present with the President that there is breakdown of constitutional machinery, as distinguished from an ordinary breakdown of law and order in the said state. The centre should give a warning to the state and a time period of one week to reply. The majority enjoyed by the Council of Ministers can be tested only on the floor of the house and not outside it. The court also held that a state assembly can be dissolved only if parliament has approved the proclamation. The judgment also ruled that an improperly dismissed government could be restored to office. In this case, Supreme Court boldly stated limitations and paradigm within which Article 356 has to function. Supreme court said that Article 356 should be used as the last resort when constitutional machinery in the state has collapsed as it is the extreme power. Thus, during Narasimha Rao's minority government, Supreme Court became a strong bulwark of Constitutional right and propriety.

The first major implication of the Bommai judgment^[32] came in 1997, when President K. R. Narayanan returned recommendation to impose President's rule in Uttar Pradesh. In 1998, he again returned a recommendation to impose President's rule in Bihar with his minute written that^[33] "...1. the condition precedent for the invocation of Article 356, viz. that there has been failure of the Constitutional machinery in the state, has not been adequately made out by the Governor.", "... 2. it would be imprudent to take action under Article 356 in Bihar when preliminary steps such as warning, directives and eliciting explanation from the state have not been taken by the Union", "...3. the fact that the government headed by Shrimati Rabri Devi enjoys majority support in the legislative assembly has to be borne in mind as per the Sarkaria (Commission) passage cited in the Bommai judgement." Bommai judgement^[32] was again applied in Bihar in case of case of *Rameshwar Prasad and others verses Union of India*^[27] in 2005, when Governor Buta Singh, recommended the

dissolution of the state assembly, without it being convened even once after an inconclusive election. Supreme court said that imposition was unconstitutional but did not restore the assembly as another election had already been ordered.

Hence, it can be said that since the Bommai judgment ^[32] of 1994 and Narayanan's interventions of 1997 and 1998, President's rule wanton imposition instances have dwindled considerably. It is also to be noted down here that since nineties, no absolute majority has been enjoyed by any government in centre except Narendra Modi's Government. President's rule was used 20 times between 1950 and 1970. It was imposed 63 times in 20 years between 1971 and 1990. President's rule imposition in states has been different across various decades. Between 1991 and 2010, it was used 27 times. When President's rule was imposed in Uttarakhand in March, 2017 it became the 115th instance of imposition of President's rule since 1950. However, its use has considerably come down in the last two decades. National Commission ^[22] also felt that unquestionably power of Article 356 belong to the Union, it is circumscribed by the political reality of a multi-party system where the States have acquired lot of bargaining power and can threaten central government which has decreased instances of invocation of Article 356. The Sarkaria Commission Report ^[7] concluded: "...It is the Union of India which is the basis of our nationality...States are but limbs of the Union, and while we recognize that the limbs must be healthy and strong...it is the strength and stability of the Union and its capacity to develop and evolve that should be governing consideration of all changes in the country..."

The National Commission⁶ in its report said that "...The Commission feels that there is no dichotomy between a strong Union and strong States. Both are needed. The relationship between the Union and the States is a relationship between the whole body and its parts. For the body being healthy it is necessary that its parts are strong. It is felt that the real source of many of our problems is the tendency of centralisation of powers and misuse of authority..."

B. P. Jeevan Reddy ^[34] member of National Commission also criticised use of Article 356 when he said that "The power conferred by article 356 is a conditioned power; it is not an absolute power to be exercised in the discretion of the President. The condition is the formation of satisfaction - subjective, no doubt- that a situation of the type contemplated by the clause has arisen. This satisfaction may be formed on the basis of the report of the Governor or on the basis of other information received by him, or both. The existence of relevant material is a pre-condition to the formation of satisfaction. The use of the word "may" indicates not only a discretion but an obligation to consider the advisability and necessity of the action. It also involves an obligation to consider which of the several steps specified in sub-clauses (a), (b) and (c) should be taken and to what extent? The dissolution of the Legislative Assembly - assuming that it is permissible - is not a matter of course. It should be resorted to only when it is necessary for achieving the purposes of the proclamation. The exercise of the power is made subject to approval of the both Houses of Parliament. Clause (3) is both a check on the power and a safeguard against abuse of power.....

..... Clause (1) opens with the words "if the President is

satisfied". These words are indicative of the satisfaction being a subjective one.... Having regard to the nature of the power and the situation in which it is supposed to be exercised, principles of natural justice cannot be imported into the clause. It is evident that the satisfaction has to be formed by the President fairly, on a consideration of the report of the Governor and/or other material, if any, placed before him....

..... It is indeed difficult - nor is it advisable - to catalogue the various situations which may arise and which would be comprised within clause (1). It would be more appropriate to deal with concrete cases as and when they arise. The satisfaction of the President referred to in clause (1) maybe formed either on the receipt of the report(s) of the Governor or otherwise.... He (the Governor) takes the oath, prescribed by Art.159, to preserve, protect and defend the Constitution and the laws to the best of his ability. It is this obligation which requires him to report to the President the commissions and omissions of the government of his State which according to him are creating or have created a situation where the government of the State cannot be carried on in accordance with the provisions of the Constitution...."

The Sarkaria Commission ^[7] noted that "failure of the constitutional machinery can be examined under following political crisis, internal subversion, physical breakdown and non-compliance with constitutional directions of the Union Executive. For political crisis it suggested Governor to explore all possibilities of a viable government and it not the, to held fresh elections avoidable delay. For internal subversion, if State government deliberately pursues an unconstitutional policy, then invocation of President's rule can be called after giving warnings and opportunities for corrective measures. Same can be followed for non-compliance with constitutional directions of the Union Executive and physical breakdown of state.

Supreme Court ^[35] in *Keshavan v. State of Bombay* observed that: "An argument founded on what is claimed to be the spirit of the Constitution is always attractive for it has a powerful appeal to sentiment and emotion; but a Court of law has to gather the spirit of the Constitution from the language of the Constitution. What one may believe or think to be the spirit of the Constitution cannot prevail if the language of the Constitution does not support that view."

Governors actions have been vivaciously attached in recent years in the matter of installation/dissolution of ministries, which itself is a disturbing feature. A Governor is a vital link between Union and State and has been assigned the role of a Constitutional sentinel. He/She is also a useful player in communication channel between Union and State in matters of mutual interest and responsibility. He takes an oath while joining office which binds him to preserve, protect and defend the Constitution and also to devote himself to the service and well being of people of State concerned. If allegations are made against him that he is un- mind of his Constitutional duties, a partisan and/or is acting like an agent of a political party, it naturally is a serious matter ^[5]. Present Modi Government's record is tarnished as he is now doing worse than Indira Gandhi did in her first stretch in power ^[20]. Supreme Court has driven the return of Congress governments in two states (Uttarakhand and Arunachal Pradesh) in less than three months in 2016 which has lead BJP government at the

Centre to earned the dubious distinction of having been back footed on the imposition of Article 356 in perhaps the quickest succession in Indian judicial history. These instances also brought the office of the Governor under cloud when different parties are in power at the Centre and in the state. These prompted Supreme Court to lay down contours of power and also reaffirmed its role and authority which was underscored forcefully. Presidential proclamation was challenged in Uttarakhand while the role of the Governor was scrutinised in Arunachal's case. Justice Madan B Lokur held that: "It must be appreciated that no one is above the law and equally, no one is not answerable to the law..." in his judgment that restored the Congress government in Arunachal. These judgments have elucidated the significance of the "principle of responsible government" and the necessity of a "comity" between the constitutional functionaries "to further the constitutional vision of democracy in the larger interests of the nation". Constitution Bench described the role of central government as "a thrashing to the Constitution and a spanking to governance", and advised that the Governor, in such instances, must "keep clear of any political horse-trading, and even unsavoury political manipulations, irrespective of the degree of their ethical repulsiveness". Courts further warned Governor to remember that he is not a democratically elected representative, and hence, not authorized to act without the aid and advice of the Chief Minister and his Council of Ministers and assume powers of a responsible government. The judgments also gave guiding directions to the Governors to act dispassionately and disassociate themselves from the political affiliations once they resume the constitutional posts. If the governor believes that the state government has lost the confidence of the majority, floor test is must before sending a report to the President. Court also emphasized on the role of the Speaker of the Legislative Assembly when it said that: "...no other authority, including the Governor, can direct the Speaker on how to conduct the proceedings of the House...".

Another constitutional issue in India is related to office of the President. President also must be neutral, non-partisan and impartial in federal system. But since 1960s, office of the Indian President is also politicized. 42nd Amendment of the Constitution has main role in it as it legally bound the President to take advice of the leader of the majority party. For depoliticization of the office of the President of repealing the Forty-second Amendment is first step.

According to Niranjana Sahoo^[19], failure or success of centre government largely depends upon its ability to manage federal arithmetic. Presently, many core economic activities and service delivery functions are carried out by states while centre gives broad directions. Present PM has served as CM for 12 years, and on various occasions stated about his seriousness about reconstructing centre state relations and strengthening cooperative federalism while his union minister for finance has called it competitive federalism. Modi's government has also accepted recommendations of the Fourteenth Finance Commission (FFC), and has raised devolution of central taxes to states to 42 per cent^[36]. It may seem like a good beginning, yet there is a long way to go to overcome the several challenges facing Centre-state relations. As, further provisions that reveal the constitutional imbalance between the Union and the states include unequal

representation of the states in the Rajya Sabha, the amending process of the Indian Constitution, the all-India services, the single judiciary system, provisions for reservation of certain state bills for Presidential assent, criteria of distribution of revenue resources and the single Election Commission.

According to Niranjana Sahoo^[19], after two decades of Independence, Indian National Congress (INC) rapidly declined in the 1960s, which led to rising influence of regional politics and brought key principles of federalism under intense scrutiny. Collapse of one-party dominance or "the Congress System"^[37] and rise of regional parties and coalition governments led to drastic change in federal relations, which in time resulted in states gaining a greater voice and more political autonomy.

According to Anoop Sadanandan^[17], regional parties^[38] have bridled the central government by increasing their presence in the federal cabinet and Parliament, as well as by entering into opportunistic alliances with national parties. This way regional parties can act as veto players within the coalition central government effectively. The broad sense when central government is helped by regional parties with disparate political orientations, checks and balances are introduced that were otherwise absent in parliamentary systems. Even though such alliances lead to government instability, they help maintain and strengthen the federal balance in democratic India. In this way they have brought into the central government a political orientation which was not present in the centre and introduced constraints to check arbitrary dismissal of state governments. Their rise has enabled judiciary and President to restrain federal usurpation of state governance which they were unable to do before 1990s and also facilitated reassessment of Article 356. Lloyd Rudolph and Susanne Hoerber Rudolph^[39], argued that coalition governments emergence in India's brought a shift in its nature from an "interventionist" to a "regulatory state."

Subrata Mitra and Malte Pehl^[40] observed that since 1999, more than 20 parties have been sharing power at centre. The immense increase of regional parties^[41] and new political players led to a shift in the country's electoral equations. Milan Vaishnav^[42], have analysed that since 1980s, in each general election the vote share of regional parties has gone up – from less than 20 percent in 1984, to between 48-53 percent presently^[43]. In the 2009 general elections, regional parties captured a huge chunk of 53 percent of the total vote share. Despite the over whelming majority of Bharatiya Janata Party in the May 2014 Lok Sabha elections, national parties received just about 52 per cent of the vote share.

This has adversely affected certain domains that were considered the Centre's prerogative. For instance, the Centre's monopoly to decide on foreign policy and national security issues has on occasions been questioned by the states, especially those governed by regional parties.

In past few decades, various states have asserted their stand and even vetoed vital strategic and foreign policy decisions of the Centre. For example the Teesta River Treaty agreement with Bangladesh have been the cancelled due to West Bengal Chief Minister Mamata Banerjee's last minute political blackmail^[44]. In another similar case, Tamil Nadu Government led by the DMK leaded to change of stand of Indian government on the UNHRC vote on Sri Lanka.

After Mumbai terror Attack in November 2008, there was an intense debate on assigning certain key responsibilities involving internal security to the Delhi. But public order public order comes under the purview of states. Thus, the Centre's role has been limited in instances where crimes are even federal in nature (involving two or more states). There is no listing of federal crime under the Indian Constitution like US and no central agency (including CBI), has powers equivalent to that of the US FBI which can take suo motu action. With internal security facing new challenges daily (rise of terrorist attacks, Maoist insurgency, J&K Problem) review the existing federal arrangements is must. However, states have unanimously opposed any moves by the Union Government that would alter the existing framework. For instance, recently setting up a National Counter- Terrorism Centre (NCTC) to counter terror was opposed by most states including some belonging to the ruling party as it would undermine the autonomy of states which is guaranteed by the Constitution ^[45]. Similarly, amendment in the Railway Protection Force Act, 1957 and the Border Security Force Amendment Bill 2011 have also been opposed by states.

Above mentioned points refer to steady erosion of faith and trust between Union and states. More such instances in the future could have serious consequences for India's internal security, foreign relations and long term strategic security.

Despite rapidly deteriorating relations between centre and states successive governments at the Centre have paid little or no attention to creating and nurturing federal bridging institutions ^[46]. In initial decades of freedom, India was governed by Indian National Congress (INC), which acted as an 'informal forum' of bargaining for much of the states and contentious issues were resolved in a cooperative framework, which no longer exist. Inter-State Council (ISC) ^[47] under Article 263 was created in the 1980s to promote cooperative federalism, have enjoyed little support from political masters at the Centre. The Council has not yet developed any reliable mechanism for dialogue on vital socio-economic and political issues among states and between the Union and the States ^[17]. Other various consultation platforms are however present such as Chief Ministers' Conferences on specific issues, State Ministers' Conferences on a variety of subjects etc. Yet, no formal institutional structure is present whose mandatory consultation is required for legislation under the Concurrent List. National Development Council, which can occasionally give views the Five Year and the Annual Plans, is seldom convened for suggestions in policy formulation and implementation in items under Concurrent List.

National Commission ^[6] believed that articles 245 to 254, has stood the test of time and it is need of the hour to institutionalise the process of consultation between the Union and the States on legislation under the Concurrent List for which individual and collective consultation with the States is suggested through the Inter-State Council. A new item i.e. Management of Disasters and Emergencies, Natural or Man-made is also suggested to be made part of Concurrent List.

Various Commissions and Committees appointed (the JVP Committee ^[48], the Dar Commission ^[48], Fazl Ali Commission ^[48], the States Reorganisation Commission (SRC) ^[49], the Rajamannar Committee ^[50], the Sarkaria Commission ^[7], National Commission ^[6] etc.) since Independence and

founding father had predominant concern to consider reorganisation of States or Union-State Relations for the unity and integrity of India. This stupendous task is still going on for national integration which is also an acknowledgement of the hard reality of our nation and Union being still in the making.

Many people argue the case for centralization of public policies for solution of the socio-economic and other problems of this vast heterogeneous land. Still, if there is anyone country which needs a federal structure the most, it is India with its large area, huge population especially young population and wide diversities of race, religion, culture, language and ways of life. Thus, a free and pluralistic society can be maintained by formulation and implementation of public policy on a consensual basis based on true federal spirit by genuine sharing of powers and responsibilities from the lowest levels of governmental organization to the highest stage through the establishment of a system. Federalism in India has been constantly changing since its inception due to variety of factors, most important among them being single party dominance for almost three decades, the informal and deliberate modification in the original distribution of powers, peculiar ethnic, linguistic, cultural, economic and political characteristics and multiple levels of economic and social development of the constituent states. All these factors have influenced the opposing forces of centralisation and decentralisation at various times. Even today, we can't find a model of federalism to the maximum satisfaction of each of the constituent units involved.

^[51] To prevent the article 356's arbitrary use, presently various institutional safeguards are set in place. First, President who makes the official proclamation can return the central cabinet's recommendation back for reconsideration if he or she finds the invocation of the emergency in the state unreasonable ^[52]. Such a response from President is seen as politically embarrassing to the central government as it is a signal to public and media that constitutional provisions are being misused by federal officials. Second, after presidential assent, proclamation must get passed by both houses of Parliament within two months, failing which the proclamation will be ineffective. This gives Members of Parliament an opportunity to question the union government's decision and, to vote down the proclamation. Finally, President's proclamation for invocation of emergency can be challenged in the courts.

As commented in an editorial ^[53], "if the principle of unity in diversity is to be restored to its pristine strength in India, not only must the states recognise the strength that accrues to them from the country's oneness, the centre for its part must also concede the richness and vibrancy that flow from the sub-cultural differences among its many and varied regions." But such a change can't occur until all round development of a federal spirit amongst the Union and its constituent units.

To sum up, the growing imbalances and deeply unequal Centre-state relations grounded on many paradoxes have created roadblocks for cooperative federalism. In this regard, a serious review of Centre-state relations is overdue and the country, which has reached an inflection point on many frontiers, can barely ignore the key structural impediments stalling the nation's growth and governance. For functioning

of Governor and president, it can be said that ^[54] “It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote.” As the R.S. Sarkaria and others ^[34] rightly observed “...It needs to be remembered that only the spirit of "cooperative federalism" can preserve the balance between the Union and the States and promote the good of the people and not an attitude of dominance or superiority. Under our constitutional system, no single entity can claim superiority. Sovereignty doesn't lie in any one institution or in any one wing of the government. The power of governance is distributed in several organs and institutions - a sine qua non for good governance. Even assuming that Centre has been given certain dominance over the States, that dominance should be used strictly for the purpose intended, nor the oblique purposes. An unusual and extraordinary power like the one contained in article 356 cannot be employed for furthering the prospects of a political party or to destabilize a duly elected government and a duly constituted Legislative Assembly. The consequences of such improper use may not be evident immediately. But those do not go without any effect and their consequences become evident in the long run and may be irreversible....”

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